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11 on behalf of the State of California,
12 and others similarly situated and aggrieved

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF ALAMEDA**

15 MARIA GUADALUPE HERNANDEZ on
16 behalf of the State of California, and others
17 similarly situated and aggrieved,

18 Plaintiff,

19 v.

20 YZER, LLC, a Florida limited liability
21 company; PEOPLEASE LLC, a South
22 Carolina limited liability company; and
23 DOES 1-100, inclusive,

24 Defendants.

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Angela Linhares,
Deputy Clerk

Case No.: **23CV03008**

**PLAINTIFF'S REPRESENTATIVE
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT,
CAL. LABOR CODE SECTIONS 2698, et
seq.**

1 Plaintiff, MARIA GUADALUPE HERNANDEZ (“PLAINTIFF”), an individual on behalf
2 of the State of California, and all other Aggrieved Employees (as defined below), hereby files this
3 Complaint against Defendants YZER, LLC, a Florida limited liability company; PEOPLEASE LLC,
4 a South Carolina limited liability company; and DOES 1-100, inclusive, (collectively referred to
5 herein as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as follows:

6 **INTRODUCTION**

7 1. This is a representative action filed by PLAINTIFF on behalf of all Aggrieved
8 Employees and the State of California against DEFENDANTS, pursuant to California’s Private
9 Attorney General Act, Labor Code section 2698 *et. seq.* (“PAGA”), to recover civil penalties (75%
10 payable to the Labor and Workforce Development Agency and 25% payable to Aggrieved
11 Employees) for DEFENDANTS’ violations of the California Labor Code as alleged below.

12 **JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over PLAINTIFF’s claims for penalties pursuant to
14 California statutes, including but not limited to the PAGA, and decisional law and regulations.

15 3. Venue is proper in this judicial district and the County of Alameda pursuant to
16 California Code of Civil Procedure section 395.5 because DEFENDANTS transact business within
17 this judicial district and conduct alleged by PLAINTIFF herein occurred in this this judicial district.
18 *See also Crestwood Behavioral Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue
19 in a PAGA action is proper in any county where the defendants committed Labor Code violations
20 against some of its employees).

21 **THE PARTIES**

22 4. PLAINTIFF is, and at all relevant times, was an individual domiciled in the State of
23 California and a citizen of the State of California. PLAINTIFF was employed by DEFENDANTS
24 in the State of California as a non-exempt employee.

25 5. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
26 PLAINTIFF worked for DEFENDANTS as a delivery driver and/or similar title(s) from in or around
27 July 2021 through on or about August 15, 2022. PLAINTIFF worked for DEFENDANTS out of
28 DEFENDANTS’ facility located in Santa Fe Springs, California, with routes including but not

1 limited to, in City of Industry, Commerce, and Santa Fe Springs, California. PLAINTIFF regularly
2 worked at least eight (8) hours per day, at least (5) days per week. DEFENDANTS paid PLAINTIFF
3 an hourly rate for time counted by DEFENDANTS as hours worked.

4 6. DEFENDANTS are either a Florida limited liability company and/or a South
5 Carolina limited liability company that, at all relevant times, were authorized to do business within
6 the State of California and are doing business in the State of California.

7 7. YZER, LLC owns, operates and/or otherwise manages a logistics company
8 specializing in, including but not limited to, courier services and/or the delivery of pharmaceuticals,
9 office supplies, auto parts, among other goods.¹ PEOPLEASE LLC owns, operates and/or otherwise
10 manages a company that supplies labor and human resources to businesses, including but not limited
11 to, YZER LLC.² DEFENDANTS own, operate and/or otherwise manage facilities, and/or locations
12 in California including but not limited to facilities in San Diego, City of Industry and Santa Fe
13 Springs, California.

14 8. The true names and capacities of the DOE Defendants sued herein as DOES 1
15 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
16 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
17 responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to amend this
18 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
19 become known.

20 9. PLAINTIFF is further informed and believes that, at all relevant times, each
21 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
22 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
23 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
24 the other defendants in a joint enterprise for profit, and bore such other relationships to some or all
25 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
26 complaint. PLAINTIFF is further informed and believes and thereon alleges that each Defendant
27

28 ¹ See <https://yzerco.com/opportunities/> (Last visited on January 5, 2023).

² See <https://www.peoplease.com/our-company/> (Last visited on January 5, 2023)

1 acted pursuant to and within the scope of the relationships alleged above, and that at all relevant
2 times, each Defendant knew or should have known about, authorized, ratified, adopted, approved,
3 controlled, aided and abetted the conduct of all other Defendants.

4 **JOINT LIABILITY**

5 10. Under California law, the definition of the terms “to employ” are broadly construed
6 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
7 exercise control over the wages, hours or working conditions; (2) to suffer or permit to work; or (3)
8 to engage, thereby creating a common law employment relationship. See, *Martinez v. Combs*, 49
9 Cal.4th 35, 64 (2010). One reason that the IWC defined “employer” in terms of exercising control
10 was to reach situations in which multiple entities control different aspects of the employment
11 relationship. Supervision of the work, in the specific sense of exercising control over how services
12 are properly performed, is properly viewed as one of the “working conditions” mentioned in the
13 wage order. *Id.* at 76. A joint employer relationship exists, for example, when one entity (such as a
14 temporary employment agency) hires and pays a worker, and the other entity supervises the work.
15 *Id.* Moreover, the California Court of Appeal recently broadened the test for joint employment in
16 California, applying a less stringent standard to what constitutes sufficient control by a business
17 over its vendor’s employees’ wages and working conditions to render that business liable as a joint
18 employer. See, *Medina v. Equilon Enterprises, LLC*, 68 Cal. App. 5th 868 (2021); “[i]f the putative
19 joint employer instead exercises enough control over the intermediary entity to *indirectly* dictate the
20 wages, hours, or working conditions of the employee, that is a sufficient showing of joint
21 employment,” *Id.* at 875 [emphasis added].

22 11. During PLAINTIFF’s employment by DEFENDANTS, PLAINTIFF and other
23 Aggrieved Employees (defined below) were jointly employed by DEFENDANTS for purposes of
24 the Wage Orders, under the alternative definitions of “to employ” adopted by the California
25 Supreme Court in *Martinez*, supra. As discussed below, these DEFENDANTS (1) exercised control
26 over wages, hours and working conditions of PLAINTIFF and Aggrieved Employees; (2) suffered
27 or permitted PLAINTIFF and Aggrieved Employees to work for them; and (3) engaged PLAINTIFF
28 and Aggrieved Employees to work for them.

1 12. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
2 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
3 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices
4 across all of their locations/facilities and subjected all of the Aggrieved Employees to these same
5 policies and practices regardless of the location(s) where they worked. Among other things,
6 PLAINTIFF is informed and believes that: (1) there is common ownership in, and financial control,
7 in DEFENDANTS' companies, (2) DEFENDANTS utilize common management, who have control
8 over the day-to-day operations and employment matters, including the power to hire and fire, set
9 schedules, issue employee policies, and determine rates of compensation across its locations in
10 California; (3) DEFENDANTS utilize the same policies and procedures for all California
11 employees, including issuing the same employee handbooks and other form agreements; (4)
12 DEFENDANTS use at least some of the same Human Resources personnel and attorneys to oversee
13 employment matters; and, (6) DEFENDANTS share employees.

14 13. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
15 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF and Aggrieved
16 Employees upon whose behalf PLAINTIFF brings these allegations and cause of action, in that
17 DEFENDANTS, exercised sufficient control over PLAINTIFF and the Aggrieved Employees'
18 wages, hours and working conditions, and/or suffered or permitted them to work so as to be
19 considered the joint employers of PLAINTIFF and Aggrieved Employees.

20 14. Upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
21 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
22 time-keeping practices, meal and rest periods, reimbursement of business expenses and other
23 working conditions that were distributed to, and/or applied to PLAINTIFF and Aggrieved
24 Employees, and further that DEFENDANTS uniformly compensated and controlled the wages of
25 PLAINTIFF and other Aggrieved Employees in a uniform manner. DEFENDANTS collectively
26 represented to PLAINTIFF and other Aggrieved Employees that each was an "at-will" employee of
27 DEFENDANTS, and that DEFENDANTS collectively retained the right to terminate PLAINTIFF's
28 and other Aggrieved Employees' employment with or without cause. Upon information and belief,

1 DEFENDANTS further collectively represented to PLAINTIFF and Aggrieved Employees in
2 writing the details of their compensation, and the manner in which they were to take meal and rest
3 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
4 and the policies applicable to PLAINTIFF and Aggrieved Employees by which DEFENDANTS
5 collectively would evaluate their wage rates.

6 15. Moreover, based on information and belief, PEOPLEASE LLC hired PLAINTIFF
7 and entered into a written employment agreement with PLAINTIFF. During PLAINTIFF's
8 employment, PEOPLEASE LLC maintained control over many aspects of PLAINTIFF's
9 employment, including, among other things, having the authority to discipline PLAINTIFF, change
10 PLAINTIFF's job assignment, change PLAINTIFF's work hours, change PLAINTIFF's rates of pay,
11 and to terminate PLAINTIFF's employment.

12 16. In addition, when PLAINTIFF was first hired, PEOPLEASE LLC provided
13 PLAINTIFF with orientation and training materials. PEOPLEASE LLC issued PLAINTIFF written
14 policies concerning meal periods, rest breaks, timekeeping, hours worked, and payment of
15 PLAINTIFF's wages, with which PLAINTIFF was required to comply. Based on information and
16 belief, among other things, these policies provided that PLAINTIFF's weekly time records be
17 submitted to PEOPLEASE LLC, and PEOPLEASE LLC was supposed to process PLAINTIFF's
18 time records and pay PLAINTIFF for all hours worked. PEOPLEASE LLC exercised ultimate
19 control over the payment of PLAINTIFF's wages, as PEOPLEASE LLC issued PLAINTIFF her
20 paychecks. Finally, PEOPLEASE LLC directed PLAINTIFF to comply with YZER, LLC's policies
21 and directions. PLAINTIFF is informed and believes that PEOPLEASE LLC exercised the same
22 control over, applied the same policies and practices, and engaged in the same acts and omissions
23 with regard to the other Aggrieved Employees.

24 17. YZER, LLC similarly suffered or permitted PLAINTIFF to work for them or
25 engaged PLAINTIFF to work for them. PLAINTIFF is informed and believes that YZER, LLC
26 entered into a written agreement with PEOPLEASE LLC, pursuant to which YZER, LLC paid
27 PEOPLEASE LLC to provide it with workers, including PLAINTIFF, to conduct YZER, LLC's
28 business operations - namely, to work in YZER, LLC's warehouses and/or as drivers for its courier

1 service/logistics business. YZER, LLC suffered or permitted PLAINTIFF to work at YZER, LLC
2 and for the entirety of PLAINTIFF's employment.

3 18. YZER, LLC further exercised control over PLAINTIFF's wages, hours and working
4 conditions. YZER, LLC also: (1) set PLAINTIFF's work hours and provided PLAINTIFF with
5 PLAINTIFF's work schedule; (2) provided PLAINTIFF with policies regarding meal periods and
6 rest breaks, with which PLAINTIFF was required to comply; (3) directly supervised PLAINTIFF's
7 work through its employees; (4) assigned PLAINTIFF job duties and trained PLAINTIFF on said
8 job duties; (5) exercised authority to reprimand and counsel PLAINTIFF regarding any work
9 performance and other issues; (6) exercised authority to end PLAINTIFF's work assignment at any
10 time, which essentially equated to a termination of employment as PLAINTIFF was not guaranteed
11 any other job assignments; (7) required PLAINTIFF to use its timekeeping system for purposes of
12 recording time worked; (8) determined whether and when PLAINTIFF would receive meal periods
13 and rest breaks; (9) subjected PLAINTIFF to unlawful schedules for taking meal periods and rest
14 breaks; and, (10) was responsible for recording when PLAINTIFF began and ended work shifts. On
15 information and belief, YZER, LLC issued further written policies and practices and guidelines
16 governing PLAINTIFF's working conditions with which PLAINTIFF was required to comply.
17 PLAINTIFF is informed and believes that YZER, LLC exercised the same control over, applied the
18 same policies and practices, and engaged in the same acts and omissions with regard to the other
19 Aggrieved Employees.

20 19. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
21 and working conditions of PLAINTIFF and Aggrieved Employees. As such, DEFENDANTS
22 collectively held the right to control virtually every aspect of PLAINTIFF's and the Aggrieved
23 Employees' employment, including the instrumentality that resulted in the illegal conduct for which
24 PLAINTIFF seeks relief in this Complaint.

25 20. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
26 control over, applied the same policies and practices, and engaged in the same acts and omissions
27 with regard to the other Aggrieved Employees.

28 21. PLAINTIFF is informed and believes and hereon alleges that DEEFENDANTS must

1 be classified as joint employers of PLAINTIFF for purposes of liability for civil penalties under
2 PAGA, as the aforementioned entities engaged, suffered and permitted PLAINTIFF to perform
3 services from which they benefited, and furthermore that the aforementioned entities had the right
4 to exercise control over the wages, hours and/or working conditions of PLAINTIFF at all relevant
5 times herein, so as to be considered the joint employers of PLAINTIFF.

6 22. By reason of their status as joint employers of PLAINTIFF and Aggrieved
7 Employees, DEFENDANTS are each liable for civil penalties for violations of the California Labor
8 Code and applicable Wage Orders as to all Aggrieved Employees.

9 **PAGA ALLEGATIONS**

10 23. PLAINTIFF brings this action under the PAGA, as a representative action on behalf
11 of the State of California and all Aggrieved Employees, regarding violations of the California Labor
12 Code as set forth herein as to all Aggrieved Employees. The Aggrieved Employees include the
13 following and are collectively referred to herein as “Aggrieved Employees”:

- 14 i. PEOPLEASE LLC Direct Hires: All current and former non-exempt workers who were
15 directly employed by PEOPLEASE LLC – regardless of where those non-exempt workers
16 were assigned or staffed to work – in California at any time from one year plus 65 days
17 from the filing of the initial Complaint through the present (“PAGA Period”).
- 18 ii. YZER, LLC Temporary Hires: All current and former non-exempt workers who were
19 assigned/staffed to work at YZER, LLC by PEOPLEASE LLC and/or any other
20 staffing/temporary service agencies in California at any time from one year plus 65 days
21 from the filing of the initial Complaint through the present (“PAGA Period”).
- 22 iii. YZER, LLC Direct Hires: All current and former non-exempt workers who were directly
23 employed by YZER, LLC in California at any time from one year plus 65 days from the
24 filing of the initial Complaint through the present (“PAGA Period”).

25 24. PLAINTIFF is an “aggrieved employee,” as that term is defined under Labor Code
26 section 2699(c), as PLAINTIFF was employed by DEFENDANTS during the applicable statutory
27 limitations period and suffered one or more of the Labor Code violations set forth herein.
28 Accordingly, PLAINTIFF seeks to recover on behalf of the State of California, and all Aggrieved

1 Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.
2 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
3 Employees, as PLAINTIFF was jointly employed by DEFENDANTS and is thereby affected by
4 one or more of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23
5 Cal.App.5th 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations
6 committed by the employer – regardless of whether Plaintiff experienced all violations personally.
7 *Id.* at 760-761.

8 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

9 25. On January 6, 2023, PLAINTIFF, through counsel, gave written notice by online
10 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
11 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
12 in this Complaint (“PAGA Notice”). The PAGA Notice was also sent to DEFENDANTS via
13 certified mail.

14 26. The PAGA Notice outlined PLAINTIFF’s claims for violations of the California
15 Labor Code and the applicable wage orders on behalf of the State of California and all Aggrieved
16 Employees.

17 27. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
18 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
19 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
20 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
21 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit against DEFENDANTS
22 has duly accrued.

23 28. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
24 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
25 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

26 **FACTUAL ALLEGATIONS**

27 29. During the relevant period, PLAINTIFF, and each of the Aggrieved Employees
28 worked for DEFENDANTS in the State of California. At all times referenced herein,

1 DEFENDANTS exercised control over PLAINTIFF and Aggrieved Employees, and suffered and/or
2 permitted them to work.

3 30. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee.
4 PLAINTIFF worked for DEFENDANTS as a delivery driver and/or similar title(s) from in or around
5 July 2021 through on or about August 15, 2022. PLAINTIFF worked for DEFENDANTS out of
6 DEFENDANTS' facility located in Santa Fe Springs, California, with routes including but not
7 limited to in City of Industry, Commerce, and Santa Fe Springs, California. PLAINTIFF regularly
8 worked at least eight (8) hours per day, at least (5) days per week. At all relevant times, PLAINTIFF
9 was a non-exempt employee that was paid on an hourly basis for time counted by DEFENDANTS
10 as hours worked.

11 31. At all relevant times, PLAINTIFF was a non-exempt employee that was paid on an
12 hourly basis for time counted by DEFENDANTS as hours worked.

13 32. **Unpaid Minimum and Overtime Wages.** DEFENDANTS failed to compensate
14 PLAINTIFF and Aggrieved Employees for all hours worked, resulting in the underpayment of
15 minimum and overtime wages. DEFENDANTS failed to compensate PLAINTIFF and Aggrieved
16 Employees for all hours worked by virtue of, DEFENDANTS' automatic deduction and time
17 rounding policies, and failure to relieve employees of all duties/employer control during unpaid
18 meal periods or otherwise unlawful practices for missed or improper meal periods, as explained
19 below.

20 33. Based on information and belief, DEFENDANTS implemented a policy and/or
21 practice of rounding meal period start and end times and/or automatically deducting at least thirty
22 minutes per shift for meal periods, despite having actual and/or constructive knowledge that
23 PLAINTIFF and other Aggrieved Employees were subject to DEFENDANTS' control during
24 purported meal periods and/or were otherwise not afforded lawful meal periods, depriving
25 PLAINTIFF and Aggrieved Employees of all wages owed.

26 34. For example, DEFENDANTS performed an automatic thirty-minute deduction per
27 shift for meal periods that were cut short, interrupted and/or worked through completely. For
28 instance, PLAINTIFF was rarely, if ever, able to take a thirty-minute off-duty meal period during

1 the relevant period, however, DEFENDANTS deducted thirty minutes of time per shift as though
2 PLAINTIFF had been afforded a thirty-minute off-duty meal period per shift when she had not,
3 resulting in the consistent underpayment of wages owed to PLAINTIFF.

4 35. Based on information and belief, Aggrieved Employees were not paid for all hours
5 worked due to DEFENDANTS' policy and/or practice of paying according to scheduled hours
6 worked instead of actual time worked, time rounding policies and practices, and/or mandated off-
7 the clock work policies and/or practices.

8 36. For example, at times PLAINTIFF was required to complete work tasks before
9 clocking in for work and/or after clocking out of work, including but not limited to completing
10 deliveries and/or tasks related to completing deliveries as DEFENDANTS did not want PLAINTIFF
11 to continue working overtime hours. As such, PLAINTIFF was at times, forced to complete her
12 work tasks off-the-clock in order to avoid and/or reduce the number of overtime hours worked.
13 DEFENDANTS knew that the assigned workload would require PLAINTIFF to work well over
14 eight hours in a shift and knew when PLAINTIFF worked off-the-clock in order to complete
15 assigned deliveries, yet failed to pay PLAINTIFF for all hours worked.

16 37. Based on information and belief, DEFENDANTS engaged in systemic time record
17 manipulation to shave time worked off PLAINTIFF's and other Aggrieved Employees' workdays,
18 by, for example, editing electronic time records to delete portions of total hours worked or otherwise
19 understate actual hours worked by PLAINTIFF and other AGGRIEVED EMPLOYEES. For
20 example, PLAINTIFF reports that during including but not limited to the month of January 2022,
21 she consistently worked an average of at least 8 ½ to ten hours per day, but DEFENDANTS would
22 only compensate PLAINTIFF for up to her scheduled eight hours per day.

23 38. Based on information and belief, DEFENDANTS required AGGRIEVED
24 EMPLOYEES to undergo security checks/temperature screenings and/or were required to stand in
25 employee lines/undergo other waiting time to access DEFENDANTS' electronic time keeping
26 system prior to clocking in for the start of their shifts, before clocking back in from meal periods
27 and/or after clocking out for their shifts, resulting in uncompensated work time, and the
28 underpayment of wages owed to Aggrieved Employees, in violation of California's minimum wage

1 laws.

2 39. Based on information and belief, PLAINTIFF and other Aggrieved Employees were
3 required to perform other off-the-clock work for which they were not compensated. For example,
4 based on information and belief, before starting a shift and clocking in for a shift, Aggrieved
5 Employees were required to perform work off-the-clock. For example, at times, based on
6 information and belief, DEFENDANTS required Aggrieved Employees to perform pre-trip
7 inspections and/or complete other work tasks before clocking in for a shift. This work time was
8 completed off-the-clock/outside of the scheduled shift and was uncompensated resulting in unpaid
9 wages owed to Aggrieved Employees, in violation of California's minimum wage laws.

10 40. Based on information and belief, at times, DEFENDANTS' electronic employee
11 time-keeping system malfunctioned such that Aggrieved Employees were required to either
12 reinitiate and/or otherwise troubleshoot the system prior to being able to clock in and/or were unable
13 to clock in at all for the start of their shifts and/or clock back in from meal periods, resulting in off-
14 the-clock work and the underpayment of wages owed to Aggrieved Employees. Based on
15 information and belief, Aggrieved Employees experienced the same issues when clocking out for
16 shifts and/or back in for meal periods. This time spent under DEFENDANTS' control was not
17 recorded and not compensated and resulted in unpaid minimum wages owed to Aggrieved
18 Employees.

19 41. Based on information and belief, DEFENDANTS at times required Aggrieved
20 Employees to travel between DEFENDANTS' facility locations and/or between job sites without
21 compensating Aggrieved Employees for the travel time.

22 42. Based on information and belief, DEFENDANTS failed to pay Aggrieved
23 Employees for time they were required to spend completing orientation, policy questionnaires,
24 training, obtaining certifications, completing required classes and/or testing and/or time spent
25 completing the onboarding process including but not limited to reviewing various documents and
26 policies provided by DEFEDANTS. Based on information and belief, this work time was completed
27 off-the-clock and was not compensated.

28 43. Based in information and belief, DEFENDANTS implemented a time-rounding

1 system that as applied systematically deprived PLAINTIFF and other Aggrieved Employees of
2 compensable time because the time-rounding system implemented by DEFENDANTS would
3 almost always, if not always, result in understating actual compensable work time.

4 44. For example, DEFENDANTS issued wage statements and/or pay records evidence
5 rounding to at least the nearest quarter, half and/or whole hour. For instance, DEFENDANTS'
6 issued wage statement and/or pay record for PLAINTIFF for pay period beginning on 1/10/22 and
7 ending 1/16/22 shows exactly 39.00 hours worked; DEFENDANTS' issued wage statement and/or
8 pay record for pay period beginning 1/17/22 and ending 1/23/22 also shows exactly 39.00 hours
9 worked; DEFENDANTS' issued wage statement and/or pay record for pay period beginning
10 1/31/22 and ending 2/6/22 shows precisely 32.00 hours worked; DEFENDANTS' issued wage
11 statement and/or pay record for pay period beginning 2/7//22 and ending 2/13/22 shows exactly
12 39.00 hours worked; DEFENDANTS' issued wage statement and/or pay record for pay period
13 beginning 2/14/22 and ending 2/20/22 also shows exactly 39.00 hours worked. Based on
14 information and belief, DEFENDANTS rounded to at least the nearest quarter, half and/or whole
15 hour, PLAINTIFF and other Aggrieved Employees' total hours worked during most if not all pay
16 periods, resulting in the consistent underpayment of wages owed to PLAINTIFF and other
17 Aggrieved Employees.

18 45. DEFENDANTS' failure to pay for all time worked by virtue of its time rounding,
19 auto-deduction policies and practices for unlawful meal periods, failure to provide lawful meal
20 periods, and/or other off-the-clock work practices and policies, resulted in the underpayment of
21 minimum wages owed to PLAINTIFF and Aggrieved Employees as well as unpaid overtime wages
22 for those Aggrieved Employees who worked more than eight (8) hours in a day and/or more than
23 forty (40) hours in a week.

24 46. Based on information and belief, DEFENDANTS had actual and/or constructive
25 knowledge that its time rounding policies/practices, auto-deduction policies and practices, failure to
26 provide lawful meal periods (as described below) and/or other off-the-clock work resulted in the
27 underpayment of minimum wages and overtime wages owed to Aggrieved Employees, in violation
28 of California's minimum and overtime wage laws.

1 47. Based on information and belief, DEFENDANTS failed and continue to fail to pay
2 Aggrieved Employees two times their regular rate of pay for time worked beyond twelve (12) hours
3 per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in
4 a work week, in violation of California's overtime laws.

5 48. Based on information and belief, DEFENDANTS failed to incorporate all non-
6 discretionary remuneration, including but not limited to, shift differential pay, bonus pay/incentive
7 pay, multiple base rates of pay and/or other non-discretionary pay into the regular rate of pay used
8 to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime
9 wages owed to PLAINTIFF and other Aggrieved Employees.

10 49. **Meal Period Violations.** PLAINTIFF and other Aggrieved Employees consistently
11 worked shifts of at least five and one-half hours or more, entitling them to at least one meal period.
12 However, PLAINTIFF and other Aggrieved Employees would not receive legally compliant thirty
13 (30) minute first and second meal periods. Based on information and belief, Aggrieved Employees
14 were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often
15 being forced to take late meal periods, interrupted meal periods, and/or work through part or all their
16 meal periods due to understaffing, the nature and constraints of their job duties and/or commentary
17 from supervisors pressuring them to take non-compliant meal periods or skip meal periods
18 completely.

19 50. For example, PLAINTIFF was consistently pressured to complete deliveries within
20 specified time windows and/or complete deliveries and/or routes faster and was instructed by her
21 supervisor not to stop/pull over her vehicle to take meal periods and that it was against company
22 policy for her to stop the vehicle anywhere other than at her scheduled pickup and drop off locations.
23 Due to the pressure to complete assigned worked duties and/or explicit instruction from management
24 to remain on duty at all times during her shifts and/or until the completion of her route, PLAINTIFF
25 was rarely, if ever, able to take a timely, uninterrupted, off-duty, thirty-minute meal period. As such,
26 PLAINTIFF would often eat her meals and/or take purported meal periods while driving between
27 delivery locations, and/or would regularly take late meal periods in order to complete her assigned
28 deliveries. Moreover, on information and belief, Aggrieved Employees frequently received work

1 related communications during any purported meal periods and were required to respond to such
2 work-related communications from other drivers, management, vendors, and/or clients during
3 unpaid meal periods.

4 51. Based on information and belief, other Aggrieved Employees were consistently
5 suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods
6 interrupted, cut short, and/or otherwise on duty due to commentary from supervisors, understaffing,
7 the nature and constraints of their job duties, and/or the need to meet DEFENDANTS' goals and
8 expectations.

9 52. Based on information and belief, DEFENDANTS implemented policies and/or
10 practices that failed to relieve Aggrieved Employees of all duties and DEFENDANTS' control
11 during unpaid meal periods.

12 53. For example, based on information and belief, Aggrieved Employees were required
13 to remain tethered to their worksites and/or in immediate physical proximity to their assigned
14 vehicles and/or were required to monitor work communication devices and respond to work-related
15 communications during unpaid meal periods. As such, Aggrieved Employees were not relieved of
16 all duties during unpaid meal periods.

17 54. Based on information and belief, DEFENDANTS required Aggrieved Employees to
18 complete off-the-clock work prior to their scheduled shift time which DEFENDANTS failed to take
19 into account when scheduling meal periods for Aggrieved Employees. Based on information and
20 belief, meal periods were late, in part due to unaccounted pre-shift off-the-clock work.

21 55. Based on information and belief, despite DEFENDANTS' failure to provide lawful
22 meal periods, DEFENDANTS implemented a policy and/or practice of rounding the start and end
23 times of PLAINTIFF's and other Aggrieved Employees' meal periods and/or automatically
24 deducting at least thirty minutes per shift for missed, on-duty, and/or otherwise unlawful meal
25 periods (including but not limited to meal periods restricted to DEFENDANTS' premises and/or
26 interrupted meal periods), despite having actual and/or constructive knowledge that PLAINTIFF
27 and other Aggrieved Employees did not receive lawful meal periods.

28 56. Moreover, based on information and belief, Aggrieved Employees who worked shifts

1 of more than ten hours did not receive a second legally compliant thirty (30) minute meal period.
2 For example, when PLAINTIFF worked shifts lasting longer than ten (10) hours, she was not
3 afforded any version of a second meal period.

4 57. Based on information and belief, DEFENDANTS failed to instruct PLAINTIFF and
5 other Aggrieved Employees as to the timing and duty-free nature of meal periods. Based on further
6 information and belief, DEFENDANTS did not have a compliant written meal period policy, nor
7 did DEFENDANTS have any sort of compliant policy in practice.

8 58. Moreover, based on information and belief, DEFENDANTS failed to keep accurate
9 records of the true start and end times of PLAINTIFF's and Aggrieved Employees' meal periods.
10 Based on information and belief, to the extent meal periods were recorded, DEFENDANTS illegally
11 rounded the start and end times of purported meal periods resulting in PLAINTIFF and other
12 Aggrieved Employees not being paid for all time worked as well as late and/or shortened meal
13 periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58.

14 59. Based on information and belief, DEFENDANTS had actual and/or constructive
15 knowledge that its policies and practices resulted in the denial of timely uninterrupted meal periods
16 that were free of DEFENDANTS' control owed to PLAINTIFF and other Aggrieved Employees, in
17 violation of California's meal period laws.

18 60. DEFENDANTS failed to pay PLAINTIFF and other Aggrieved Employees, an
19 additional hour of wages at their respective regular rates of compensation for each workday a lawful
20 meal period was not provided. DEFENDANTS either failed to pay a meal period premium at all for
21 each workday a lawful meal period was not provided and/or failed to pay the proper meal period
22 premium for failure to incorporate all non-discretionary remuneration, including but not limited to,
23 bonuses, shift differential pay and/or other non-discretionary compensation into the regular rate or
24 compensation for purposes of calculating the owed meal period premium.

25 61. **Rest Period Violations.** DEFENDANTS did not properly authorize and provide
26 PLAINTIFF and other Aggrieved Employees with legally compliant rest periods at a rate of every
27 four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the
28 middle of the work period, as required by law.

1 62. PLAINTIFF and other Aggrieved Employees were not adequately informed,
2 authorized, instructed about, nor permitted an opportunity to take proper rest periods per California
3 law. Based on information and belief, DEFENDANTS had no policy in place nor instruction as to
4 the taking or timing of duty-free rest periods.

5 63. Based on information and belief, DEFENDANTS did not have a have a compliant
6 written rest period policy, nor did DEFENDANTS have any sort of compliant rest period policy in
7 practice.

8 64. For example, PLAINTIFF rarely (if ever) received a legally compliant rest period or
9 any form of a rest period. PLAINTIFF was pressured to complete her assigned deliveries and
10 complete her delivery routes and was not afforded with the opportunity to take rest periods.
11 Moreover, based on information and belief, Aggrieved Employees were required to be responsive
12 to work-related communications throughout their shifts including but not limited to during any
13 purported rest periods.

14 65. Based on information and belief, any purported rest periods were interrupted, cut
15 short, on duty, restricted to premises, and/or late due to understaffing, the nature and constraints of
16 their job duties, and/or commentary from supervisors pressuring them to skip rest periods
17 completely and/or take non-compliant rest periods.

18 66. Moreover, DEFENDANTS failed to provide any form of a third rest period on shifts
19 lasting longer than ten hours. For example, when PLAINTIFF worked shifts lasting longer than ten
20 (10) hours, she was not afforded any version of a third rest period.

21 67. Based on information and belief, DEFENDANTS implemented policies and/or
22 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
23 DEFENDANTS' control during rest periods.

24 68. For example, based on information and belief, Aggrieved Employees were required
25 to remain tethered to their worksites and/or in immediate physical proximity to their assigned
26 vehicles and/or were required to monitor work communication devices and respond to work-related
27 communications during any purported rest periods. As such, Aggrieved Employees were not
28 relieved of all duties during any rest periods.

1 69. Based on information and belief, Aggrieved Employees were pressured to complete
2 their work duties according to a designated schedule such that rest periods were only taken once
3 tasks were completed, and/or as time permitted.

4 70. Furthermore, DEFENDANTS failed to pay a rest period premium for each day in
5 which PLAINTIFF and other Aggrieved Employees experienced a missed/unlawful rest period in
6 violation of California law. DEFENDANTS either failed to pay a rest period premium at all for each
7 workday a proper rest period was not provided and/or failed to pay the proper rest period premium
8 for failure to incorporate all non-discretionary remuneration, including but not limited to, bonuses,
9 shift differential pay, and/or other non-discretionary compensation into the regular rate of
10 compensation for purposes of calculating the owed rest period premium.

11 71. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
12 provide PLAINTIFF and other Aggrieved Employees with accurate wage statements that complied
13 with Labor Code section 226. As DEFENDANTS failed to provide PLAINTIFF and Aggrieved
14 Employees with meal and rest periods that complied with Labor section 226.7, the wage statements
15 DEFENDANTS issued to PLAINTIFF and Aggrieved Employees failed and continue to fail to
16 correctly set forth the gross wages earned, the total hours worked, the net wages earned, and all
17 applicable hourly rates in effect during the pay period and the corresponding number of hours
18 worked at each hourly rate by the employee.

19 72. DEFENDANTS issued wage statements to PLAINTIFF and other Aggrieved
20 Employees that also failed to indicate the earned gross and net wages earned during the pay period,
21 the correct applicable rates of pay for all hours worked, and the total hours worked by PLAINTIFF
22 and Aggrieved Employees (by virtue of rounded time entries, automatic deduction for meal
23 periods/failure to relieve Aggrieved Employees of all duties and employer control during unpaid
24 meal periods, payment according to scheduled hours worked rather than actual hours worked, and/or
25 other off-the-clock work policies and practices described above) which results in a violation of
26 Labor Code section 226(a).

27 73. Based on information and belief, wage statements issued by DEFENDANTS failed
28 to list all applicable hourly rates in effect during the pay period and the corresponding number of

1 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
2 Code section 226(a)(9). Based on information and belief, at times, DEFENDANTS paid Aggrieved
3 Employees multiple base rates of pay but failed to incorporate the multiple base rates into the regular
4 rate of pay used to calculate the owed overtime rate, thereby failing to display an accurate overtime
5 rate, in violation of Labor Code section 226(a), including but not limited to, section 226(a)(9).

6 74. Moreover, based on information and belief, DEFENDANTS issued wage statements
7 to PLAINTIFF and Aggrieved Employees that further violate Labor Code section 226(a), by among
8 other things, failing to list the correct name and/or address of the legal entity that is the employer,
9 in violation of Labor Code section 226(a)(8).

10 75. Based on information and belief, wage statements issued by DEFENDANTS failed
11 to list the inclusive dates of the pay period for which the Aggrieved Employee is being paid. For
12 example, DEFENDANTS' wage statements issued to PLAINTIFF list a category for "Retro Pay"
13 without including the inclusive dates of the accurate pay period for that "Retro Pay," further failing
14 to list the total hours worked for the pay period, including but not limited to, the total hours worked
15 for the pay period the retroactive pay corresponds with. As a result, the wage statements provided
16 to PLAINTIFF and other Aggrieved Employees are not accurate and do not include all of the
17 statutorily required information, such as, but not limited to, the inclusive dates of the period for
18 which the employee is paid, in violation of including but not limited to, Labor Code section
19 226(a)(6).

20 76. As such, DEFENDANTS' issued wage statements to Aggrieved Employees that did
21 not include all of the statutorily required information, including but not limited to, the correct name
22 and/or address of the legal entity that is the employer.

23 77. Based on further information and belief, DEFENDANTS issued wage statements to
24 Aggrieved Employees that failed to list the accurate total hours worked whenever shift differential
25 wages were paid in violation of Labor Code section 226.

26 78. As a result, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved
27 Employees that were not accurate and did not include all of the statutorily required information. As
28 such, DEFENDANTS violated Labor Code section 226.

1 79. **Unlawful Deductions.** Labor Code section 221 prohibits an employer from
2 “collect[ing] or receiv[ing] from an employee any part of wages theretofore paid by said employer
3 to said employee.” Based on information and belief DEFENDANTS made unlawful deductions
4 from Aggrieved Employees’ paychecks during the relevant period, by including but not limited to
5 unlawfully deducting wages paid in previous pay periods. Such a practice is in violation of including
6 but not limited to, Labor Code Sections 221-222 which subjects DEFENDANTS to civil penalties
7 under Labor Code Section 2699.

8 80. **Failure to Produce Employment Records.** Based on information and belief,
9 DEFENDANTS have a uniform policy and practice of failing to produce or make available a current
10 or former employee’s time, pay, and/or personnel records when requested pursuant to Labor Code
11 sections 226, 1198.5, 432, and/or the applicable Wage Order. For example, PLAINTIFF, through
12 counsel, sent DEFENDANTS multiple written requests for time, pay and personnel records
13 including but not limited to a written request for payroll and personnel records mailed to
14 DEFENDANTS on or around October 3, 2022, and another written request mailed on or around
15 December 14, 2022. Yet, DEFENDANTS failed to timely produce complete records within the time
16 periods delineated by California labor law. Based on information and belief, DEFENDANTS failed
17 and continue to fail to timely produce complete time, pay, and personnel records when requested by
18 other Aggrieved Employees.

19 81. **Inaccurate Records.** Based on the above-described unlawful policies and practices,
20 DEFENDANTS failed and continue to fail, to keep accurate and complete payroll records as
21 required by Labor Code sections 1174, 1198, 1199, and section 7 of all applicable Wage Orders.
22 DEFENDANTS failed, and continue to fail, to keep accurate and complete payroll records as
23 required by law, including but not limited to the following records: total daily hours worked,
24 applicable rates of pay, time records showing when PLAINTIFF and other Aggrieved Employees
25 began and ended each work period, time records of meal periods, and accurate itemized wage
26 statements.

27 82. DEFENDANTS have failed and continue to fail to keep accurate and complete
28 records showing total hours worked by virtue of DEFENDANTS’ time rounding, automatic meal

1 period deductions, failure to relieve PLAINTIFF and Aggrieved Employees of all duties and
2 employer control during unpaid meal periods, failure to record the true start and end times of meal
3 periods, shift start times and shift end times, and other off-the-clock work policies and practices
4 described herein.

5 **83. Unreimbursed Business Expenses.** Based on information and belief,
6 DEFENDANTS required PLAINTIFF and other Aggrieved Employees to incur business expenses
7 as a direct consequence of the performance of their job duties without providing reimbursement, in
8 violation of Labor Code section 2802. Based on information and belief, PLAINTIFF and other
9 Aggrieved Employees were improperly required to provide and maintain work tools that are
10 supposed to be the responsibility of the employer.

11 **84.** Based on information and belief, DEFENDANTS shifted its costs of doing business
12 onto Aggrieved Employees by requiring them to pay for its business expenses, including but not
13 limited to, uniforms/work clothing, protective gear/safety equipment and/or the use of Aggrieved
14 Employees' personal mobile phone and data usage for work related purposes including but not
15 limited to receiving and responding to work related messages and/or phone calls. Based on
16 information and belief, Aggrieved Employees were not reimbursed for the cost of using their
17 personal phone for work related purposes and/or the cost of purchasing and/or maintaining work
18 uniforms/clothing. For example, on information and belief, Aggrieved Employees received
19 calls/messages to their personal cell phones/mobile devices from Aggrieved Employees regarding
20 scheduling and/or other work tasks but were not provided any and/or full reimbursement from
21 DEFENDANTS for this personal cell phone use.

22 **85.** Based on information and belief, DEFENDANTS required Aggrieved Employees to
23 use their personal vehicles for work without reimbursing them for the vehicle expenses they incurred
24 in connection therewith. For example, based on information and belief, DEFENDANTS failed/fails
25 to reimburse Aggrieved Employees for the costs associated with travelling between
26 DEFENDANTS' various facilities and/or delivery sites, including but not limited to, mileage, wear
27 and tear, and gas when they were required to use their personal vehicles to drive between
28 DEFENDANTS' facilities/job sites and/or use their personal vehicles for other business purposes.

1 For instance, at times PLAINTIFF was required to use her personal vehicle for business purposes,
2 including but not limited to, to make deliveries for DEFENDANTS, but did not receive any and/or
3 full reimbursement from DEFENDANTS for the costs incurred in connection with DEFENDANTS'
4 business use of her personal vehicle.

5 86. Based on information and belief, Aggrieved Employees were improperly required to
6 pay for additional business expenses that are the responsibility of DEFENDANTS, including but
7 not limited to, cost of tools, cost of gas, costs of repairs, fines, cleaning fees and/or other work-
8 related fees incurred as a direct consequence of the discharge of their assigned job duties. For
9 example, on information and belief, Aggrieved Employees were at times required to purchase hand
10 tools, tires and/or pay for the maintenance of dollies and/or other equipment required to perform
11 their assigned work duties without receiving any and/or full reimbursement from DEFENDANTS
12 for the costs they incurred in connection therewith.

13 87. Based on information and belief, DEFENDANTS regularly failed to reimburse and
14 indemnify Aggrieved Employees for business expenses. Pursuant to California Labor Code section
15 2802, PLAINTIFF and Aggrieved Employees were entitled to be reimbursed for all reasonable
16 expenses associated with carrying out DEFENDANTS' orders and/or carrying out the duties
17 assigned by DEFENDANTS.

18 88. DEFENDANTS' failure to provide Aggrieved Employees with full reimbursement
19 for all reasonable expenses associated with carrying out their duties required that Aggrieved
20 Employees subsidize and/or carry the burden of business expenses in violation of Labor Code section
21 2802.

22 89. **Sick Leave Violations.** Throughout the relevant time period, DEFENDANTS failed
23 to provide proper paid sick leave to PLAINTIFF and other Aggrieved Employees. DEFENDANTS
24 either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the
25 sick leave rate of pay owed to PLAINTIFF and other Aggrieved Employees by failing to base the
26 accrued sick leave hours on the correct number of hours worked (as a result of the
27 rounding/automatic deduction policies and practices for meal periods and/or shift start and end
28 times/other required off-the-clock work including but not limited to unpaid meal periods) and by

1 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
2 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
3 compensation into the sick leave pay rate calculation.

4 90. Upon information and belief, DEFENDANTS further failed to place PLAINTIFF
5 and Aggrieved Employees on notice of their paid sick leave rights – or thereby putting their
6 entitlement to sick leave in a Labor Code section 2810.5 notice. Based on information and belief,
7 DEFENDANTS failed to provide notice of the correct sick leave amount balance available to
8 PLAINTIFF and other Aggrieved Employees on their wage statements or other written statement.
9 Moreover, based on information and belief, DEFENDANTS failed to maintain accurate records of
10 used sick leave and the balance of paid sick leave.

11 91. Based on information and belief, throughout the relevant time period,
12 DEFENDANTS failed to provide notice of the balance of sick leave pay left for PLAINTIFF and
13 all Aggrieved Employees, thus affecting their intelligent exercise of their paid sick leave. But for
14 this failure, PLAINTIFF and all Aggrieved Employees would have used their paid sick leave at least
15 prior to their respective separations, for as on several occasions thereafter, he or she would have
16 been entitled to use the banked sick leave and earn appropriate compensation.

17 92. Upon information and belief, DEFENDANTS failed and continue to fail to comply
18 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with
19 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
20 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
21 wages.

22 93. As such, DEFENDANTS have violated California's paid sick leave laws and
23 unlawfully retained and continue to retain paid sick leave that should have been paid and was not as
24 a result of DEFENDANTS' failure to properly institute a lawful paid sick leave program. These
25 unlawful practices and policies violate Labor Code sections 245-248.5.

26 94. **Failure To Provide Supplemental Paid Sick Leave.** Labor Code § 248.2 provides
27 that all employers with 26 or more employees are required to provide up to 80 hours for covered
28 employees to take 2021 COVID-19 Supplemental Paid Sick Leave to care for themselves, to care

1 for a family member or if it is vaccine-related. Based on information and belief, DEFENDANTS
2 violated Labor Code § 248.2 by not providing Aggrieved Employees with required 2021 COVID-
3 19 Supplemental Paid Sick Leave. Based on information and belief, DEFENDANTS failed to
4 provide Supplemental Paid Sick Leave in 2022 in violation of Labor Code section 248.6.

5 95. **Failure to Pay Vested Vacation/Paid Time Off:** Based on information and belief,
6 DEFENDANTS have and continue to have a uniform policy and practice of failing to allow
7 Aggrieved Employees to use their earned vacation/paid time off during their employment and/or
8 failing to pay all vested, accrued paid time off to Aggrieved Employees upon separation of
9 employment, in violation of California law, including but not limited to, Labor Code section 227.3.

10 96. **Failure to Timely Pay All Wages Upon Separation of Employment.** Based on
11 information and belief, DEFENDANTS failed to timely pay Aggrieved Employees all wages that
12 were due and owing upon termination or resignation. Based on information and belief,
13 DEFENDANTS untimely provide final wages to Aggrieved Employees without regard to the timing
14 requirements of Labor Code sections 201-202.

15 97. Upon separation of employment, Aggrieved Employees' final paychecks were not
16 timely provided and/or were not timely provided with all owed vacation pay and/or paid time off.
17 Moreover, Aggrieved Employees' final paychecks, once provided, did not include all wages owed
18 as they were devoid of, including but not limited to, all owed minimum wages, overtime wages,
19 premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly
20 accrued rates.

21 98. **Unlawful Agreements-Unlawful Criminal History Inquiries.**

22 Unlawful Agreements/ Unlawful Financial and Criminal Background Checks.

23 99. Based on information and belief, DEFENDANTS required Aggrieved Employees to
24 agree in writing to unlawful conditions of employment including but not limited to unlawful
25 criminal and/or financial checks as a condition of obtaining and/or continuing employment in
26 violation of Labor Code section 432.5.

27 100. Based on information and belief, DEFENDANTS ordered unlawful financial credit
28 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required Aggrieved

1 Employees to provide ongoing written consent to the unlawful credit checks as a condition of
2 employment, in violation of California and Federal law, which results in a further violation of Labor
3 Code section 432.5.

4 101. Based on information and belief, DEFENDANTS also required Aggrieved
5 Employees to submit and/or agree to submit in writing to unlawful criminal background checks as
6 a condition of obtaining and/or holding employment in violation of the Investigative Consumer
7 Reporting Agencies Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit
8 Reporting Act (FCRA - 15 U.S.C. section 1681, *et seq.*). Based on information and belief,
9 DEFENDANTS failed and continue to fail to comply with the requirements of the ICRAA and
10 FCRA when conducting background screenings for applicants, including but not limited to
11 Aggrieved Employees that were subject to a background check as a condition of employment during
12 the application phase.

13 102. Based on information and belief, DEFENDANTS required Aggrieved Employees to
14 agree in writing to a background check which failed to abide by the requirements set forth in CA
15 Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by
16 failing to provide a clear and conspicuous disclosure and/or failing to provide any disclosure at all,
17 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
18 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
19 failing to provide a way by which the individual could request a copy of the report, failing to disclose
20 the name, address, and telephone number of the third party preparing the report, and failing to
21 properly obtain authorization or consent to such a background check, and thus was an unlawful
22 background check.

23 103. By requiring Aggrieved Employees to agree in writing to unlawful criminal and/or
24 financial checks not in conformance with the applicable laws, DEFENDANTS violated Labor Code
25 section 432.5.

26 104. Based on further information and belief, DEFENDANTS also required Aggrieved
27 Employees to agree in writing to provide ongoing consent to DEFENDANTS to conduct
28 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA

1 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
2 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

3 105. Based on further information and belief, DEFENDANTS knew that requiring
4 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
5 condition of obtaining and/or holding employment was unlawful.

6 106. By requiring Aggrieved Employees to agree in writing to unlawful provisions as a
7 condition of employment, DEFENDANTS violated Labor Code section 432.5.

8 Unlawful Inquires into Criminal History

9 107. Labor Code section 432.7 prohibits an employer from asking applicants about past
10 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
11 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
12 convictions on its employment application, in violation of California law.

13 108. Upon information and belief, DEFENDANTS, in violation of California law,
14 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
15 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
16 employment and/or otherwise impermissibly inquired into criminal history on its employment
17 application in violation of California law, and in violation of Labor code section 432.5.

18 109. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS
19 engaged in these same herein described unlawful practices, which led to violations of the California
20 Labor Code as further alleged below, and that DEFENDANTS applied these same herein described
21 unlawful practices to all of its employees that it applied to PLAINTIFF.

22 **FIRST CAUSE OF ACTION**
23 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS**
24 **2698, *ET SEQ.***

25 **(On behalf of PLAINTIFF, Aggrieved Employees and the State of California against all**
26 **Defendants)**

27 110. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 **Failure to Keep Accurate Records**

111. California Labor Code § 1174 requires employers to keep “accurate and complete”
payroll records showing, among other things, the hours worked daily by all non-exempt employees.

1 All applicable Wage Orders § 7 similarly requires employers to keep time records reflecting the
2 times during which all owed meal periods were provided each day.

3 112. At all relevant times, DEFENDANTS failed, and continue to fail, to keep accurate
4 and complete records as required by law, including but not limited to the following records: total
5 daily hours worked, applicable rates of pay, time records showing when PLAINTIFF and other
6 Aggrieved Employees began and ended each work period, time records of meal periods, and
7 accurate itemized wage statements.

8 113. DEFENDANTS' failure to keep "accurate and complete" payroll records for
9 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
10 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
11 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
12 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
13 period during which the referenced statutes and Wage Order provisions were violated.³

14 **Failure to Produce Records in Violation of Labor Code §§ 226(b)-(c), 1198.5, and 432**

15 114. Time and Pay Records: Labor Code section 226 and all applicable IWC Wage
16 Orders, section 7 require that employers keep the following information on file for each employee
17 for a minimum of three years: The employee's dates of employment; the employee's hourly rates
18 and the corresponding number of hours worked by the employee at each hourly rate, when the
19 employee begins and ends each work period (including meal periods) and split intervals; total hours
20 worked by the employee; all deductions; gross wages earned; and net wages earned.

21 115. Section (b) of Labor Code section 226 further requires employers to "afford current
22 and former employees the right to inspect or receive a copy of records pertaining to their
23 employment upon reasonable request to the employer." Section (c) of Labor Code section 226
24 provides that, "an employer who receives a written or oral request to inspect or receive a copy of

25 ³ Labor Code § 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); Labor
26 Code § 558 (establishing that the civil penalty is "for each underpaid employee for each pay period for which the
27 employee was underpaid"); All applicable wage orders, § 20 (establishing that "in addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid") (emphasis added).

1 records pursuant to subdivision (b) pertaining to a current or former employee shall comply with
2 the request as soon as practicable, but no later than 21 calendar days from the date of the request. A
3 violation of this subdivision is an infraction.” An employer’s failure to comply within this timeframe
4 entitles a current or former employee to recover a seven hundred fifty-dollar (\$750) penalty from
5 the employer. Lab. Code section 226(f).

6 116. Personnel Records. In addition to their right to time and pay records, employees, and
7 their representatives, have the right to inspect and receive a copy of their personnel files pursuant to
8 Labor Code section 1198.5. This statute applies to both former and current employees. Labor Code
9 section 432 further specifies that employers must furnish copies of all employment records bearing
10 the employee’s signature. Labor Code section 1198.5 also requires that the file be made available
11 for inspection or receipt within a “reasonable” amount of time, but “not later than 30 calendar days
12 from the date the employer receives a written request.” An employer’s failure to comply within this
13 timeframe likewise entitles a current or former employee to recover a seven hundred fifty-dollar
14 (\$750) penalty from the employer. Lab. Code section 1198.5(k).

15 117. Based on information and belief, DEFENDANTS fail to timely produce or make
16 available Aggrieved Employees’ personnel records and/or payroll records when requested pursuant
17 to Labor Code sections 226, 1198.5, 432, and/or the applicable Wage Order. These violations subject
18 DEFENDANTS to penalties under Labor Code sections 226, 1198.5, and 2699.

19 **Meal Period Violations**

20 118. California law requires employers to provide employees a duty-free, uninterrupted
21 thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and
22 it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and
23 all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior*
24 *Court* (2012) 53 Cal.4th 1004.

25 119. Employers must also provide employees with a second duty-free, uninterrupted thirty
26 (30) minute meal period when an employee works more than (10) hours in a workday, and it must
27 be provided before the end of the 10th hour of work. *Ibid*.

28 120. Employers covered by any and all applicable IWC Wage Orders have an obligation

1 to both (1) relieve their employees for at least one meal period for shifts over five hours (see above),
2 and (2) to record having done so. If the employer fails to properly record a valid meal period, it is
3 presumed that no meal period was provided. All applicable IWC Wage Orders, section 7(A)(3)
4 (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing
5 section 7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a
6 rebuttable presumption arises that the employee was not relieved of duty and no meal period was
7 provided”).

8 121. Employers must pay employees an additional hour of wages at the employees’
9 regular rate of pay for each missed or unlawful meal period (e.g., less than 30 minutes, interrupted
10 meal period, first meal period provided after five (5) hours, second meal period provided after 10
11 hours). Lab. Code § 226.7; all applicable IWC Wage Orders, §11(B) (“If an employer fails to
12 provide an employee a meal period in accordance with the applicable provision of this Order, the
13 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation
14 for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4th 1004.

15 122. As explained above, PLAINTIFF and other Aggrieved Employees were consistently
16 unable to take timely, off duty, thirty-minute, uninterrupted first and second meal periods, often
17 being forced to take late meal periods, interrupted meal periods, and/or work through part or all of
18 their meal periods due to understaffing, the nature and constraints of their job duties, and/or
19 commentary from supervisors pressuring them to take non-compliant meal periods or skip meal
20 periods completely.

21 123. Based on information and belief, DEFENDANTS had and continue to have a policy
22 of rounding the start and end times of employees’ meal periods and/or automatically deducting thirty
23 minutes per shift despite having actual and/or constructive knowledge that PLAINTIFF and
24 Aggrieved Employees did not receive compliant meal periods.

25 124. Moreover, based on information and belief, Aggrieved Employees did not receive a
26 timely, uninterrupted second meal period when working shifts over ten (10) hours in a workday.

27 125. PLAINTIFF is informed and believes and thereon alleges that DEFENDANTS had
28 actual and/or constructive knowledge that its time-rounding and auto-deduction policies and

1 practices, other unlawful policies and practices resulted in the denial of compliant meal periods in
2 violation of California's meal period laws.

3 126. DEFENDANTS also failed to pay premiums for missed/otherwise unlawful meal
4 periods in violation of California law and/or failed to pay the proper meal period premium for failure
5 to incorporate all non-discretionary remuneration including but not limited to, bonuses, shift
6 differential pay and/or other non-discretionary compensation into the regular rate or compensation
7 for purposes of calculating the owed meal period premium.

8 127. These unlawful meal period policies and practices result in violations of Labor Code
9 sections 226.7, 512, and 1198-1199, and all applicable wage orders, § 11. These violations subject
10 DEFENDANTS to civil penalties under Labor Code §§ 558, 558.1 and 2699, and all applicable
11 Wage Orders, § 20. These practices result in further violations such as violations of Labor Code §
12 1174 as discussed above, 1198-1199, 226.6 and other violations discussed below.

13 **Rest Period Violations**

14 128. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
15 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
16 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
17 “insofar as practicable.” In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
18 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
19 shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to
20 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
21 1029). The rest period requirement obligates employers to permit and authorize employees to take
22 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
23 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
24 257. If the employer fails to provide any required rest period, the employer must pay the employee
25 one hour of pay at the employee’s regular rate of compensation for each workday the employer did
26 not provide at least one legally required rest period, pursuant to Labor Code section 226.7, and
27 applicable IWC Wage Order, §12(B).

28 129. Moreover, under California law rest periods must be a “net” ten minutes in a suitable

1 rest area. *Id.* at 268 (relying on January 3, 1986 and February 22, 2002 Division of Labor Standards
2 Enforcement (DLSE) Letters wherein the DLSE ruled that the net ten-minute language for rest
3 periods means ten minutes of time in a rest area and cannot include time it takes to get to and from
4 the rest area). The employer must show that it clearly articulates the right to a net ten minutes,
5 which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what
6 happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in
7 the rest area). *Id.*; see also, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the
8 “onus is on the employer to clearly communicate the authorization and permission [to take rest
9 periods] to its employees.”).

10 130. PLAINTIFF and the Aggrieved Employees did not receive legally compliant, timely
11 10-minute rest periods for every four (4) hours worked or major fraction thereof. As explained
12 above, any purported rest periods were late, interrupted, cut short, on duty, and/or otherwise subject
13 to DEFENDANTS’ control due to the nature and constraints of Aggrieved Employees’ job duties,
14 understaffing, and/or commentary from supervisors pressuring PLAINTIFF and Aggrieved
15 Employees to skip rest periods completely or otherwise take non-compliant rest periods.

16 131. Based on information and belief, DEFENDANTS implemented policies and/or
17 practices that failed to relieve PLAINTIFF and other Aggrieved Employees of all duties and
18 employer control during rest periods. Based on further information and belief, Aggrieved
19 Employees were pressured to complete their work duties according to a designated schedule such
20 that rest periods were only taken once tasks were completed, and/or as time permitted.

21 132. As a result, PLAINTIFF and Aggrieved Employees did not receive legally compliant
22 first, second, or third rest periods as required by California law.

23 133. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
24 period premium to PLAINTIFF and other Aggrieved Employees for each workday in which there
25 was a missed or otherwise unlawful rest period. Based on further information and belief, when a
26 rest premium was paid, DEFENDANTS failed to include non-discretionary compensation including
27 but not limited to, bonuses, shift differential pay, and/or other non-discretionary compensation into
28 the regular rate of compensation for purposes of determining the owed rest period premium.

1 134. As such, DEFENDANTS violated Labor Code sections 226.7, and 1198-1199, and
2 all applicable IWC Wage Orders, §12. These violations subject DEFENDANTS to civil penalties
3 under Labor Code §§ 558 and 2699, and all applicable Wage Orders, §20.

4 **Minimum and Overtime Wage Violations**

5 135. California law provides that employees in California must be paid for all hours
6 worked, up to forty (40) hour per week or eight (8) hours per day, at a regular rate that is no less
7 than the mandated minimum wage. *See* Labor Code section 1197 and the applicable Wage Order.
8 The minimum wage standard applies to each hour employees worked for which they were not paid.
9 Therefore, an employer's failure to pay for any particular hour worked by an employee is unlawful
10 even if averaging an employee's total pay over all hours worked, paid or not, results in an average
11 hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

12 136. California law also provides that employees in California must be paid overtime,
13 equal to 1.5 times the employee's regular rate of pay for all hours worked in excess of 40 hours per
14 week or 8 hours per day. *See* Labor Code 510 and the applicable Wage Order section 3. Employers
15 must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond
16 twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh
17 consecutive day of work in a work week. *Ibid.*

18 137. As explained above, DEFENDANTS violated California's minimum and overtime
19 wage laws by failing to compensate PLAINTIFF and the Aggrieved Employees for all hours worked
20 by virtue of, among other things, DEFENDANTS' time rounding policies and practices (for shift
21 start and end times and meal period start and end times), payment according to scheduled hours
22 worked, automatic deduction for meal periods, and/or off-the-clock/unpaid work completed during
23 meal periods, and/or other otherwise off-the-clock work (described above), which resulted in the
24 failure to account for all hours worked and thus the denial of minimum and overtime wages.

25 138. DEFENDANTS had and continue to have a policy of failing to pay PLAINTIFF and
26 Aggrieved Employees for all hours worked.

27 139. Based on information and belief, DEFENDANTS had actual or constructive
28 knowledge that its time-rounding policies and practices, auto-deduction policies and practices for

1 meal periods, payment according to scheduled hours, failure to relieve employees of all duties and
2 employer control during unpaid meal periods, and/or other off-the-clock work resulted in the
3 underpayment of minimum and overtime wages owed to PLAINTIFF and other Aggrieved
4 Employees.

5 140. Based on information and belief, DEFENDANTS failed to pay twice Aggrieved
6 Employees' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for
7 time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in
8 violation of California's overtime laws.

9 141. Based on information and belief, DEFENDANTS further violated California's
10 overtime wage laws by failing to incorporate all non-discretionary compensation, including but not
11 limited to, non-discretionary bonus compensation, shift differentials, and/or other non-discretionary
12 compensation into the regular rate of pay used to calculate the overtime rate of pay. Failing to
13 include non-discretionary compensation into the regular rate of pay resulted in a miscalculation of
14 the overtime wage rate, resulting in the underpayment of overtime wages owed to PLAINTIFF and
15 other Aggrieved Employees.

16 142. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
17 1194, 1197, 1198-1199, and all applicable Wage Orders. These violations subject DEFENDANTS
18 to civil penalties under Labor Code sections 218.5, 558, 558.1, 1197.1, 2699, and all applicable IWC
19 Wage Orders, section 20.

20 **Statutory Wage Violations**

21 143. California Labor Code section 223 makes it unlawful for an employer to secretly pay
22 wages lower than required by statute while purporting to pay legal wages. As described above,
23 DEFENDANTS willfully and systematically denied PLAINTIFF and Aggrieved Employees of all
24 earned minimum and overtime compensation for all hours worked which resulted in the payment of
25 less than statutorily required wages. DEFENDANTS acted with the intent to deprive them of
26 statutory wages, including, but not limited to, minimum and overtime wages, to which they were
27 entitled to under California law. Thus, DEFENDANTS paid PLAINTIFF and other Aggrieved
28 Employees lower wages than those they were entitled to while purporting that PLAINTIFF and

1 other Aggrieved Employees were properly paid. As a result, PLAINTIFF and other Aggrieved
2 Employees are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to
3 Labor Code § 2699(f)-(g).

4 **Refusal to Make Payment**

5 144. Labor Code section 216 declares unlawful an employer's refusal to pay wages due
6 and payable and/or the denial of the validity of any claim to wages due. DEFENDANTS violated
7 and continue to violate this section by failing to pay PLAINTIFF and Aggrieved Employees for all
8 hours worked at the proper wage rate and by failing to pay an additional hour of pay for each
9 meal/rest period not provided or that was otherwise unlawful. *Gould v. Maryland Sound Industries,*
10 *Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These violations subject DEFENDANTS to civil
11 penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for
12 each Aggrieved Employee, for each pay period during which the statute provisions were violated.⁴

13 **Standard Conditions of Labor Violations**

14 145. Together, Labor Code sections 1198 and 1199 make unlawful any employment of
15 any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal,
16 or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
17 sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, DEFENDANTS'
18 violations with respect to meal periods, rest periods, record keeping provisions, business expenses,
19 and minimum/overtime wages result in separate violations of sections 1198 and 1199, which subject
20 DEFENDANTS to civil penalties under Labor Code sections 1197.1 and 2699.

21 **Business Expense Violations**

22 146. California law requires employers to indemnify their employees for all necessary
23 expenditures incurred by the employee in direct consequence of the discharge of their duties or of
24 their obedience to the directions of the employer. *See* Cal. Lab. Code s. 2802 and all applicable
25 Wage Orders section 9(b). Furthermore, "for purposes of [section 2802], the term 'necessary
26

27 ⁴ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 expenditure or losses' shall include all reasonable costs, including, but not limited to, attorneys' fees
2 incurred by the employee enforcing the rights granted by this section."

3 147. Among other things, under California law, when employees must use their personal
4 cellphones for work-related purposes, the employer must reimburse them for a reasonable
5 percentage of their cell phone bills. *See Cochran v. Schwan's Home Services, Inc.* (2014) 228
6 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was
7 required to use their personal cellphone for work-related purposes and not reimbursed for the use.
8 *Id.* 1144-1145. California law also requires employers to reimburse employees for automobile
9 expenses incurred for the business use of personal vehicles, such as for mileage, gas, and the wear
10 and tear on the vehicle. *See Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554.

11 148. Further, "any contract or agreement, express or implied, made by any employee to
12 waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive
13 any employee or his personal representative of any right or remedy to which he is entitled to under
14 the laws of this State." *See* Cal. Lab. Code section 2804.

15 149. As described above, PLAINTIFF and the Aggrieved Employees were improperly
16 required to pay for business expenses that are legally the responsibility of the employer.

17 150. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
18 full reimbursement for all reasonable expenses associated with carrying out their duties required
19 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
20 expenses in violation of Labor Code section 2802.

21 151. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and other Aggrieved
22 Employees have suffered injury in that they were not completely reimbursed as mandated by
23 California law.

24 152. DEFENDANTS' failure to provide PLAINTIFF and the Aggrieved Employees with
25 full reimbursement for all reasonable expenses associated with carrying out their duties required
26 that PLAINTIFF and the Aggrieved Employees subsidize and/or carry the burden of business
27 expenses in violation of Labor Code section 2802.

28 153. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Aggrieved

1 Employees have suffered injury in that they were not completely reimbursed as mandated by
2 California law.

3 154. Despite being aware of these business expenses, DEFENDANTS failed to reimburse
4 PLAINTIFF and other Aggrieved Employees for such expenses in violation of California Labor
5 Code § 2802. In turn, there constitutes a PAGA violation based on violations of California Labor
6 Code § 2802 and the applicable Wage Order.

7 **Wage Statement Violations**

8 155. California law requires every employer semi-monthly or at the time of each payment
9 of wages to furnish its employees with an accurate itemized wage statement in writing that contains
10 the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
11 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
12 (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee
13 is paid; (7) the name of the employee and only the last four digits of his or her social security number
14 or an employee identification number other than a social security number; (8) the name and address
15 of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate. Lab. Code § 226.

17 156. As DEFENDANTS failed to provide PLAINTIFF and other Aggrieved Employees
18 with meal and rest periods that complied with Labor Code section 226.7, the wage statements
19 DEFENDANTS issued to PLAINTIFF and other Aggrieved Employees failed and continue to fail
20 to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b)
21 the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net
22 wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in
23 effect during the pay period and the corresponding number of hours worked at each hourly rate by
24 the employee, in violation of Labor Code section 226(a)(9).

25 157. Moreover, due to violations detailed above, including but not limited to,
26 DEFENDANTS' failure to pay regular and overtime wages for all hours worked, failure to provide
27 meal and rest break premiums, and failure to pay all sick leave wages at the proper rates,
28 DEFENDANTS have violated California Labor Code § 226 by willfully failing to furnish

1 PLAINTIFF and other Aggrieved Employees with accurate, itemized wage statements that listed
2 the gross and net wages earned and the correct applicable rates of pay for all hours worked. Based
3 on information and belief, DEFENDANTS failed to incorporate all forms of non-discretionary
4 compensation earned during the pay period into the regular rate of pay for purposes of calculating
5 the owed overtime rate, and as such, failed to display the proper overtime rate(s) for each hour of
6 overtime worked by PLAINTIFF and other Aggrieved Employees.

7 158. As explained above, wage statements issued by DEFENDANTS failed to list the
8 “total hours worked” by PLAINTIFF and Aggrieved Employees (by virtue of rounded time entries,
9 automatic deduction for meal periods/failure to relieve Aggrieved Employees of all duties and
10 employer control during unpaid meal periods, and/or other off-the-clock work policies and practices
11 described above), which results in a violation of Labor Code section 226(a). Failure to list all hours
12 worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226
13 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

14 159. Based on information and belief, wage statements issued by DEFENDANTS failed
15 to list all applicable hourly rates in effect during the pay period and the corresponding number of
16 hours worked at each hourly rate by the employee, in violation of, including but not limited to, Labor
17 Code section 226(a)(9).

18 160. Separately, and independent from the above allegations, based on information and
19 belief, DEFENDANTS issued wage statements to PLAINTIFF and Aggrieved Employees that
20 violate Labor Code section 226(a)(8), by failing to list the correct name and/or address of the legal
21 entity that is the employer.

22 161. Based on information and belief, wage statements issued by DEFENDANTS failed
23 to list the inclusive dates of the pay period for which the Class Member is being paid.

24 162. DEFENDANTS’ failure to accurately list all hours worked on all wage statements
25 caused confusion to PLAINTIFF and caused and continues to cause confusion to other Aggrieved
26 Employees over whether they received all wages owed to them.

27 163. As a result, PLAINTIFF and other Aggrieved Employees have suffered injury as
28 they could not easily determine whether they received all wages owed to them and whether they

1 were paid for all hours worked.

2 164. Moreover, as a result of DEFENDANTS' failure to list the correct name and/or
3 address of the legal entity that is the employer, PLAINTIFF and Aggrieved Employees have suffered
4 injury as they could not contact their employer regarding any question(s) they had about wages paid.

5 165. DEFENDANTS' knowingly and intentionally failed to provide PLAINTIFF and
6 Aggrieved Employees with accurate, itemized wage statements.

7 166. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and Aggrieved
8 Employees have suffered injury. The absence of accurate information on their wage statements has
9 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
10 mathematical computations to determine the amount of wages owed, and will cause difficulty and
11 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
12 submission of inaccurate information about wages and amounts deducted from wages to state and
13 federal government agencies. As a result, PLAINTIFF and Aggrieved Employees are required to
14 participate in this lawsuit and create more difficulty and expense from having to reconstruct time
15 and pay records than if DEFENDANT had complied with its legal obligations.

16 167. These violations subject DEFENDANTS to civil penalties under Labor Code § 226.
17 Each violation results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period
18 during which the statute provisions were violated. ⁵

19 **Unlawful Deductions**

20 168. Labor Code section 221 prohibits an employer from "collect[ing] or receiv[ing] from
21 an employee any part of wages theretofore paid by said employer to said employee." Based on
22 information and belief DEFENDANTS made unlawful deductions from Aggrieved Employees'
23 paychecks during the relevant period, by including but not limited to unlawfully deducting wages
24 paid in previous pay periods. Such a practice is in violation of including but not limited to, Labor
25 Code Sections 221-222 which subjects DEFENDANTS to civil penalties under Labor Code Section
26 2699.

27 169. Each violation results in a separate civil penalty, for each Aggrieved Employee, for

28 ⁵ Labor Code § 226.3 (establishing that the civil penalty is "per employee per violation").

1 each pay period during which the statute provisions were violated. See Lab. Code §225.5
2 (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty
3 provided in this article, every person who unlawfully withholds wages due any employee in
4 violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure
5 to pay each employee”).

6 **Sick Leave Violations**

7 170. DEFENDANTS violated California’s paid sick leave laws including, Labor Code
8 section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick leave pay to
9 PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick leave due to
10 DEFENDANTS’ failure to account for actual hours worked (as explained above), and/or failure to
11 incorporate multiple rates of pay and/or all forms of non-discretionary remuneration including but
12 not limited to, non-discretionary bonuses, shift differential pay, and/or other non-discretionary
13 compensation into the sick leave pay rate calculation.

14 171. DEFENDANTS further failed to give PLAINTIFF and other Aggrieved Employees
15 notice of their paid sick leave rights – or thereby putting their entitlement to sick leave in a Labor
16 Code section 2810.5 notice. In addition, DEFENDANTS failed to maintain accurate records of used
17 sick leave and the balance of paid sick leave left to the employees, which affected PLAINTIFF and
18 Aggrieved Employees’ intelligent exercise of their paid sick leave.

19 172. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
20 their paid sick leave at least prior to their respective separations, for as on several occasions
21 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
22 compensation.

23 173. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
24 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
25 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
26 were entitled to the maximum number of hours accruable.

27 174. Upon information and belief, DEFENDANTS failed and continue to fail to comply
28 with Labor Code section 246, by failing to provide PLAINTIFF and all Aggrieved Employees with

1 a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick
2 leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays
3 wages.

4 175. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

5 176. On information and belief, PLAINTIFF alleges that all of these practices were
6 experienced and continue to be experienced by other Aggrieved Employees.

7 177. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, the
8 aforementioned code provisions including but not limited to Labor Code section 233 and 234, and
9 seeks injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

10 **Failure To Provide Supplemental Paid Sick Leave**

11 178. Labor Code § 248.2 provides that all employers with 26 or more employees are
12 required to provide up to 80 hours for covered employees to take 2021 COVID-19 Supplemental
13 Paid Sick Leave to care for themselves, to care for a family member or if it is vaccine-related.
14 DEFENDANTS violated Labor Code § 248.2 by not providing PLAINTIFF and other Aggrieved
15 Employees with required 2021 COVID-19 Supplemental Paid Sick Leave. Based on information
16 and belief, DEFENDANTS failed to provide Supplemental Paid Sick Leave in 2022 in violation of
17 Labor Code section 248.6.

18 **Failure to Pay Vested Vacation/Paid Time Off**

19 179. California Labor Code section 227.3 provides that when an employer policy provides
20 for paid vacations and/or paid time off, and an employee is terminated without having taken off his,
21 her, or their vested vacation time, all vested vacation shall be paid to the employee as wages at the
22 employee's final rate in accordance with such contract of employment or employer policy respecting
23 eligibility or time served and that there shall be no forfeiture of vested vacation time or paid time
24 off upon termination.

25 180. Based on information and belief, DEFENDANTS had and continue to have a
26 uniform policy and practice of failing to allow Aggrieved Employees to use their earned
27 vacation/paid time off during their employment and failing to pay all vested, accrued paid time off
28 to Aggrieved Employees upon separation of employment, in violation of California law, including

1 but not limited to, Labor Code section 227.3.

2 **Untimely Payment of Final Wages**

3 181. California Labor Code section 201(a) provides, in relevant part, that “[i]f an
4 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
5 payable immediately.” California Labor Code section 202(a) provides, in relevant part, that “[i]f an
6 employee not having a written contract for a definite period quits his or her employment, his or her
7 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
8 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
9 to his or her wages at the time of quitting.”

10 182. Pursuant to Labor Code section 203, an employer that willfully fails to pay wages
11 due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty
12 equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid.
13 Case law clarifies this 30-day waiting time penalty is recoverable under the PAGA via Labor Code
14 section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also,
15 *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

16 183. Based in information and belief, DEFENDANTS failed and continue to fail to timely
17 pay final wages to PLAINTIFF and Aggrieved Employees upon separation of employment in
18 violation of Labor Code section 201-202. Moreover, final paychecks once provided to PLAINTIFF
19 and Aggrieved Employees did not include all wages owed as they are devoid of, including but not
20 limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed
21 sick leave and/or paid time off wages at the properly accrued rates.

22 184. As a result, DEFENDANTS violated Labor Code sections 201, 202, and 203. These
23 violations subject DEFENDANTS to civil penalties under Labor Code sections 203, 210, and/or
24 256.

25 **Unlawful Agreements/ Unlawful Criminal History Inquiries**

26 185. *Unlawful Agreements.* Labor Code section 432.5 provides that “no employer...shall
27 require any employee or applicant for employment to agree, in writing, to any term or condition
28 which is known by such employer...to be prohibited by law.” DEFENDANTS required and

1 continue to require PLAINTIFF and Aggrieved Employees to agree in writing to unlawful
2 conditions of employment including but not limited to unlawful criminal and/or financial checks as
3 a condition of obtaining and/or continuing employment in violation of Labor Code section 432.5.

4 186. The California Labor Code places certain procedural and substantive limits on an
5 employers' ability to conduct employee background checks and on how employers can use the
6 information they obtain through those background checks. Labor Code section 1024.5 states that
7 employers, except for financial institutions, may order a credit check only if the individual works
8 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
9 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
10 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
11 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
12 background check, including but not limited to identifying an appropriate reason for the background
13 check, a separate consent form with required disclosures and certain formatting requirements,
14 additional forms such as a summary of rights, a way by which to request a copy of the report, as
15 well as proper notice of adverse actions taken, among other statutory requirements.

16 187. Based on information and belief, DEFENDANTS ordered unlawful financial credit
17 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
18 provide ongoing written consent to the unlawful credit checks as a condition of employment, in
19 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

20 188. Based on information and belief, DEFENDANTS required Aggrieved Employees to
21 submit and/or agree to submit in writing to unlawful criminal background checks as a condition of
22 obtaining and/or holding employment in violation of the ICRAA and the FCRA as alleged above.

23 189. Based on further information and belief, DEFENDANTS required Aggrieved
24 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
25 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
26 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
27 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

28 190. Based on further information and belief, DEFENDANTS knew that requiring

1 Aggrieved Employees to agree to unlawful criminal and/or financial background checks as a
2 condition of obtaining and/or holding employment was unlawful.

3 191. By requiring that Aggrieved Employees sign off on the illegal background and/or
4 financial checks, DEFENDANTS violated Labor Code section 432.5.

5 Unlawful Inquires into Criminal History

6 192. Labor Code section 432.7 prohibits an employer from asking applicants about past
7 arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on
8 information and belief, DEFENDANTS asked Aggrieved Employees about arrests not resulting in
9 convictions on its employment application, in violation of California law.

10 193. Upon information and belief, DEFENDANTS, in violation of California law,
11 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
12 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of
13 employment and/or otherwise impermissibly inquired into criminal history on its employment
14 application in violation of California law.

15 194. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
16 Code section 432.7. By asking about convictions at the application phase or prior to extending an
17 employment offer, DEFENDANTS violated California’s Fair Chance Act, and thereby violated
18 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
19 disclose arrests and/or convictions as a condition of employment.

20 Under the provisions of PAGA and the above mentioned Labor Code sections,
21 including but not limited to Labor Code sections 201-203, 210, 216, 221-223, 225.5, 226, 226.7,
22 245-248.6, 256, 432, 432.5, 432.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1197, 1197.1, 1198,
23 1198.5, 1199, 2699, 2699.3, 2802, 2810.5 and all applicable Wage Orders as well as all
24 interpretations of these laws by California Courts and administrative bodies, as well as any other
25 law that is enforceable through PAGA, DEFENDANTS are liable for the following penalties:

- 26 a. All statutorily-specified penalties recoverable under PAGA as enumerated in the
27 relevant California Labor Code provisions listed herein only if permitted by the
28 PAGA statute, pursuant to Labor Code section 2699(a); and

1 b. Default PAGA penalties for any violation of the enumerated list of Labor Code
2 violations without a civil penalty recoverable under the PAGA, all in the default
3 amounts provided by Labor Code section 2699(f).

4 c. The proper measure of penalties under PAGA is the number of violations,
5 whether those violations were committed as against PLAINTIFF or any
6 Aggrieved Employee, whether a party to this action or not.

7 195. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
8 PLAINTIFF is entitled to recover civil penalties, costs, and attorney's fees.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for relief and judgment as follows on behalf of the State of California, and all Aggrieved Employees:

1. For civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining DEFENDANTS from engaging in similar unlawful conduct as set forth herein;
3. For reasonable attorney's fees and costs of suit; and
4. For such other and further relief that the Court deems just and proper.

Dated: March 27, 2023

CROSNER LEGAL, PC

By: 
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